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REPORT OF THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA FOR THE PERIOD 1996-1997

Prepared by the Tribunal

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I. INTRODUCTION

1. The present report of the International Tribunal for the Law of the Sea is submitted to the Meeting of States Parties under article 6, paragraph 3 (d), of the Rules of Procedure of the Meeting of States Parties. As decided by the Tribunal at its third session, this first report covers 15 months, from 1 October 1996 to 31 December 1997, and the start-up period that preceded it. The period to be covered in this report was decided upon after taking into account the initial budgetary period fixed by the Meeting of States Parties.[1]

2. The Tribunal is an independent international judicial body established pursuant to the 1982 United Nations Convention on the Law of the Sea (hereinafter "the Convention"). It functions in accordance with the Statute of the International Tribunal for the Law of the Sea (hereinafter "the Statute"), as contained in Annex VI to the Convention, as well as other relevant provisions contained in Part XV of the Convention and Part XI, section 5, of the Convention.

3. In accordance with article 2 of the Statute, the Tribunal is composed of 21 independent members, elected from among persons enjoying the highest reputation for fairness and integrity and of recognized competence in the field of the law of the sea. The candidates are nominated by the States Parties to the Convention, as provided for by article 4 of the Statute.

II. SETTING UP OF THE TRIBUNAL

A. Formative period and inauguration

4. The formative period of the Tribunal took place from 1 August 1996 to the end of its first session on 31 October 1996.

5. On 1 August 1996, the 21 judges were elected by the States Parties to the Convention. The composition of the Tribunal, in order of precedence, is as follows:

Name	Country	Date of expiry of term of office
Thomas A. Mensah	Ghana	30 September 2005
Rüdiger Wolfrum	Germany	30 September 1999
Lihai Zhao	China	30 September 2002
Hugo Caminos	Argentina	30 September 2002
Vicente Marotta Rangel	Brazil	30 September 1999
Alexander Yankov	Bulgaria	30 September 2002
Soji Yamamoto	Japan	30 September 2005
Anatoly Lazarevich Kolodkin	Russian Federation	30 September 1999

Name	Country	Date of expiry of term of office
Choon-Ho Park	Republic of Korea	30 September 2005
Paul Bamela Engo	Cameroon	30 September 1999
L. Dolliver M. Nelson	Grenada	30 September 2005
P. Chandrasekhara Rao	India	30 September 1999
Joseph Akl	Lebanon	30 September 1999
David Anderson	United Kingdom	30 September 2005
Budislav Vukas	Croatia	30 September 2005
Joseph Sinde Warioba	United Republic of Tanzania	30 September 1999
Edward Arthur Laing	Belize	30 September 2002
Tullio Treves	Italy	30 September 2002
Mohamed Mouldi Marsit	Tunisia	30 September 2005
Gudmundur Eiriksson	Iceland	30 September 2002
Tafsir Malick Ndiaye	Senegal	30 September 2002

6. The Meeting of States Parties decided that, during the formative period, there should be an interim Registry charged with making arrangements for the transition from the services of the United Nations Secretariat to the Registry of the Tribunal.[2] Among the measures taken by the United Nations Secretariat to enable this transition was the temporary assignment and loan of staff from the Secretariat. Pursuant to the decisions of the Meeting of States Parties and the General Assembly, the Secretary-General of the United Nations assigned Mr. Gritakumar E. Chitty as Director-in-Charge of the Registry, pending the election of the Registrar.[3]

7. The Tribunal held its first session from 1 to 31 October 1996, at its seat in the Free and Hanseatic City of Hamburg. At the request of the Tribunal, Mr. Hans Corell, Under-Secretary-General and the Legal Counsel of the United Nations, presided over the meetings of the Tribunal until the election of the President.

8. The ceremony of inauguration took place in the City Hall of Hamburg on 18 October 1996. The ceremony was attended by, among others, Dr. Boutros Boutros-Ghali, Secretary-General of the United Nations, Dr. Klaus Kinkel, Minister for Foreign Affairs of Germany, Dr. Etzhard Schmidt-Jortzig, Federal Minister of Justice of Germany, Dr. Henning Voscherau, First Mayor of Hamburg, Mr. Satya Nandan, President of the Meeting of States Parties and Secretary-General of the International Seabed Authority, Dr. Hasjim Djalal, President of the Assembly of the International Seabed Authority, and Mr. Lennox Ballah, President of the Council of the Authority. The International Court of Justice was represented by

Judge Carl August Fleischhauer and Mr. Eduardo Valencia-Ospina, Registrar of the Court. An audience of nearly 600 others, comprising representatives from over 67 countries and specially invited guests, also witnessed the event.

9. Pursuant to article 11 of the Statute, every member of the Tribunal is required, before taking up his duties, to make a solemn declaration at the first public sitting at which the member is present that he will exercise his powers impartially and conscientiously. During the first public sitting of the Tribunal, on 18 October 1996, the members of the Tribunal made the solemn declaration, the contents of which were provisionally adopted by the Tribunal at its first session.

B. Initial tasks

10. The first session of the Tribunal was devoted to organizational matters. An initial task facing the Tribunal was the election of its President and Vice-President, as well as its Registrar.

11. On 5 October 1996, the judges elected Judge Thomas A. Mensah (Ghana) to serve as the first President of the Tribunal. The President entered upon his functions forthwith. On the same day, Judge Rüdiger Wolfrum of Germany was elected Vice-President. As provided for in article 12 of the Statute, the President and Vice-President are both to serve for a term of three years.

12. Pursuant to article 12 of the Statute, the Registrar is elected by the Tribunal for a term of seven years from among candidates proposed by the members of the Tribunal.[4] On 23 October 1996, the judges elected Mr. Gritakumar E. Chitty (Sri Lanka) as Registrar.

13. On 24 October 1996, the Tribunal elected Mr. Philippe Gautier (Belgium) as Deputy Registrar for a term of seven years.[5]

14. During its first session, the Tribunal also approved a list of subjects for its initial consideration including, inter alia, the Rules of the Tribunal, administrative and financial matters and the establishment of chambers.

C. Incompatible activities

15. At its first session, the Tribunal considered the issue of incompatible activities and agreed on general guidelines to assist the judges in determining what activities may not be undertaken by them pursuant to article 7 of the Statute, which states:

> "No member of the Tribunal may exercise any political or administrative function, or associate actively with or be financially interested in any of the operations of any enterprise concerned with the exploration for or exploitation of the resources of the sea or the seabed or other commercial use of the sea or the seabed."

The judges have terminated functions or positions held by them which were deemed to be incompatible under these guidelines.

D. Emblem and flag

16. The Tribunal selected its emblem and flag, which was first hoisted on 11 April 1997, in a ceremony in the presence of Dr. Henning Voscherau, First Mayor of Hamburg.

III. SESSIONS OF THE TRIBUNAL AND PROGRAMME OF WORK

17. During the period under review, the Tribunal held a total of four sessions. At its first session, the Tribunal initially scheduled two sessions in 1997, in accordance with the budgetary appropriation of the Meeting of States Parties. At its third session, the Tribunal decided to convene a fourth session in 1997, in order to complete the consideration of the Rules. Expenditures for that session were approved by the Seventh Meeting of States Parties.[6] The first session took place from 1 to 31 October 1996. The Tribunal held its second session from 3 to 28 February 1997, and its third session from 2 to 29 April 1997. The fourth session took place from 6 to 31 October 1997.

18. The programme of work of the Tribunal during the period under review included the establishment of chambers, establishment of working groups and committees, consideration of the Rules of the Tribunal and other documents concerning the procedure and practice of the Tribunal, privileges and immunities of the Tribunal, relations with other organizations, administrative arrangements, budget, library and publications. These items are discussed below.

IV. ESTABLISHMENT OF CHAMBERS

19. The Tribunal constituted its Chamber of Summary Procedure at its first session. At the second session, the Tribunal established the Seabed Disputes Chamber, the Chamber for Fisheries Disputes and the Chamber for Marine Environment Disputes. Pursuant to the Statute, the members of the Seabed Disputes Chamber are selected every three years while the Chamber of Summary Procedure is constituted annually. Accordingly, new members of the Chamber of Summary Procedure were selected at the fourth session. As decided by the Tribunal, the members of the Chamber for Fisheries Disputes and the members of the Chamber for Marine Environment Disputes are selected triennially. All the members of the chambers were selected by consensus, on the proposal of the President following consultations carried out by him.

A. Seabed Disputes Chamber

20. The Seabed Disputes Chamber is established in accordance with article 14 and section 4 of the Statute to deal with disputes arising out of the exploration and exploitation of the resources of the seabed and ocean floor

beyond the limits of national jurisdiction, as set out in Part XI of the Convention.[7] The Seabed Disputes Chamber is also required to give advisory opinions at the request of the Assembly or the Council of the International Seabed Authority on legal questions arising within the scope of their activities.[8]

21. The Seabed Disputes Chamber consists of eleven judges selected by the members of the Tribunal from among themselves.[9]

22. During the second session, on 20 February 1997, the following judges, in order of precedence, were selected to serve as members of the Seabed Disputes Chamber:

President: Akl

Judges: Zhao, Marotta Rangel, Bamela Engo, Nelson, Chandrasekhara Rao, Anderson, Vukas, Warioba, Treves, Ndiaye

23. As required by the Statute, the judges of the Chamber were selected in such a manner as to ensure the representation of the principal legal systems of the world and equitable geographical distribution. The members of the Chamber entered upon their duties forthwith and proceeded to elect the President from among their members. Judge Akl was elected President of the Chamber on 27 February 1997.

B. Special chambers

1. Chamber of Summary Procedure

24. The Chamber of Summary Procedure is a standing chamber which may hear and determine cases by summary procedure if the parties so request, in accordance with article 15, paragraphs 3 and 4, of the Statute. In addition, the Chamber can prescribe provisional measures in the exercise of the Tribunal's powers, if the Tribunal is not in session or a sufficient number of members is not available.[10]

25. The Chamber of Summary Procedure is composed of five members and two alternates, as provided for by the Statute. According to article 28 of the Rules, the President and the Vice-President of the Tribunal are ex officio members of the Chamber of Summary Procedure, with the President of the Tribunal serving as President of the Chamber.

26. During the first session, on 30 October 1996, the first election of members of the Chamber for the period ending on 30 September 1997 was held. The composition of the Chamber for that period, in order of precedence, was as follows:

President: Mensah

Judges: Wolfrum, Caminos, Park, Marsit

Alternates: Kolodkin, Nelson

27. During the fourth session, on 20 October 1997, the Chamber was constituted for the period ending on 30 September 1998. Its composition, in order of precedence, is as follows:

President: Mensah

Judges: Wolfrum, Yankov, Nelson, Chandrasekhara Rao

Alternates: Marotta Rangel, Eiriksson

2. Chamber for Fisheries Disputes

28. The Chamber for Fisheries Disputes was established in accordance with article 15, paragraph 1, of the Statute. The Chamber is available to deal with disputes concerning the conservation and management of marine living resources which the parties may agree to submit to it. The Chamber consists of seven members.

29. During its second session, on 20 February 1997, the Tribunal elected the members of the Chamber, who entered upon their duties forthwith and proceeded to elect the President. Judge Caminos was elected President of the Chamber on 25 February 1997.

30. The composition of the Chamber for Fisheries Disputes, in order of precedence, is as follows:

President: Caminos

Judges: Yamamoto, Bamela Engo, Chandrasekhara Rao, Anderson, Laing, Eiriksson

3. Chamber for Marine Environment Disputes

31. The Chamber for Marine Environment Disputes is established in accordance with article 15, paragraph 1, of the Statute. The Chamber is available to deal with disputes relating to the protection and preservation of the marine environment which the parties may agree to submit to it. The Chamber consists of seven members.

32. During its second session, on 20 February 1997, the Tribunal elected the members of the Chamber, who entered upon their duties forthwith. Judge Wolfrum, Vice-President of the Tribunal, is ex officio President of the Chamber.

33. The composition of the Chamber for Marine Environment Disputes, in order of precedence, is as follows:

President: Wolfrum

Judges: Yankov, Yamamoto, Kolodkin, Park, Warioba, Marsit

V. WORKING GROUPS AND COMMITTEES

34. The Working Group of the Whole on the Rules of the Tribunal was established at the second session under the chairmanship of Judge Treves with a view to examining the Rules. The Group worked up to the end of the fourth session.

35. At the second session, the Tribunal also entrusted the preliminary consideration of certain aspects of the work on organizational matters to ad hoc working groups. The ad hoc working groups were established to deal with Budget and Financial Regulations, Staff Regulations and Library Facilities and Publications.

36. During the third session, on 29 April 1997, committees were established and replaced the ad hoc working groups. The term of office of the members of the committees is one year. It was, however, decided that the judges selected on 29 April 1997 will serve for the period ending on 30 September 1998.

A. Budget and Finance Committee

37. The Budget and Finance Committee was established to make recommendations to the Tribunal on financial matters. In particular, the Committee is responsible for considering and making recommendations on the draft budget proposals and the financial regulations, based on the proposals of the Registrar, and on the management of the finances and accounts of the Tribunal. It will also review the financial reports of the Tribunal and make recommendations thereon, as necessary. In addition, the Committee will consider a pension scheme for the members of the Tribunal and the Registrar. The Vice-President of the Tribunal, Judge Wolfrum, is Chairman of the Committee; the other members are Judges Yamamoto, Kolodkin, Bamela Engo, Akl, Warioba and Laing.

B. Committee on Rules and Judicial Practice

38. The Committee on Rules and Judicial Practice is entrusted with keeping under review the Rules of the Tribunal and their application, the Resolution on the Internal Judicial Practice of the Tribunal and the Guidelines concerning the Preparation and Presentation of Cases before the Tribunal. The Committee is responsible for proposing for consideration by the Tribunal any modification which it may consider necessary or appropriate from time to time. The Committee is presided by the President of the Tribunal, Judge Mensah, and consists of Judges Marotta Rangel, Yankov, Chandrasekhara Rao, Anderson, Vukas, Warioba, Laing, Treves and Ndiaye. The President of the Seabed Disputes Chamber, Judge Akl, is ex officio member of the Committee.

C. Committee on Staff and Administration

39. The mandate of the Committee on Staff and Administration is to make recommendations to the Tribunal, taking into account the proposals of the Registrar, on matters concerning the policies for the administration and staffing of the Registry, with special reference to the terms, conditions of service and the procedures for recruitment, discipline and separation from the service of the Tribunal. The Registrar has the responsibility for the implementation of the administration and staffing policies. The Committee is presided by Judge Chandrasekhara Rao and consists of Judges Caminos, Yankov, Bamela Engo, Nelson, Marsit and Eiriksson.

D. Committee on Library and Publications

40. The Committee on Library and Publications is required, after taking into account the assessment made by the Registrar, to advise the Tribunal on the organization, financing, requirements for and functioning of the Tribunal's Library including, in particular, the policy and procedures for the acquisition of materials and support for the Library. The Committee will also make recommendations to the Tribunal on arrangements for its publication programme, with special regard to the publications to be issued by the Tribunal under the responsibility of the Registrar. The Chairman of the Committee is Judge Park. The other members are Judges Zhao, Nelson, Anderson, Vukas, Treves and Marsit.

VI. ELECTRONIC SYSTEMS AND BUILDINGS

41. At its fourth session, the Tribunal established an informal group to examine, in consultation with the Registrar, the potential requirements for electronic communications in the permanent headquarters premises and the measures which need to be taken during the construction stage for this purpose. On the basis of this examination, the Tribunal will determine the steps to ensure that any necessary revisions are made to the building plans during the construction process.

VII. RULES OF THE TRIBUNAL AND SUPPLEMENTARY DOCUMENTS

A. Rules of the Tribunal

42. An important achievement in 1997 was the conclusion and consideration and adoption of the Rules of the Tribunal. At its first session, the Tribunal began the consideration of the Rules based on the Final draft Rules of the Tribunal prepared by the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea[11] (hereinafter "the Preparatory Commission"). These Final draft Rules were recommended to the Tribunal by the Meeting of States Parties.

43. To enable the Tribunal to deal with cases pending the formal adoption of the Rules, the Tribunal decided to apply the Final draft Rules of the Tribunal prepared by the Preparatory Commission in the meantime.

44. At its first session, the Tribunal began the consideration of the draft Rules presented by the Preparatory Commission and agreed on a revised structure for the provisions. The Tribunal decided that its Rules should be user-friendly, efficient and cost-effective and should promote the expeditious handling of cases. The Tribunal adopted provisionally the rules needed for the election of the President, the Vice-President, the Registrar and the Deputy Registrar and those necessary to constitute the Chamber of Summary Procedure.

45. Between the first and the second sessions, the judges continued their review of the Rules and submitted proposals to Judge Treves, who coordinated and consolidated the proposals in accordance with the structure approved by the Tribunal. At the second session, an informal consultative working group of the whole was established, chaired by Judge Treves, for the review of the consolidated text.

46. At the second and third sessions, the Tribunal devoted most of its time to the examination of the draft Rules. The Tribunal reached informal conclusions on the Rules dealing with the internal organization and most of the provisions regarding the proceedings in disputes.

47. The Tribunal devoted the major part of its time during the fourth session to the consideration and adoption of the Rules. The Working Group of the Whole concluded its work successfully, and on 28 October 1997, the Rules of the Tribunal were formally adopted by the Tribunal.

48. The Rules of the Tribunal consist of 138 articles adopted concurrently in English and French. They set out the organization of the Tribunal, the responsibilities of the Registrar and the organization of the Registry. Most importantly, they provide a set of procedural steps to be followed for the handling of cases, i.e. from the institution of proceedings through the different stages of written pleadings and hearings to the delivery of a judgment.

B. Resolution on the Internal Judicial Practice of the Tribunal

49. On 31 October 1997, during the fourth session, the Tribunal adopted the Resolution on the Internal Judicial Practice of the Tribunal, pursuant to article 40 of the Rules. The Tribunal considered the Resolution on the basis of a draft prepared by Judge Anderson. The Resolution stipulates the procedures by which the Tribunal shall reach decisions in cases submitted to it. It also sets forth the methods to be used for deliberation on cases and for the drafting of judgments.

C. Guidelines concerning the Preparation and Presentation of Cases before the Tribunal

50. During the fourth session, on the basis of a draft prepared by Judge Chandrasekhara Rao, the Tribunal also considered Guidelines concerning the Preparation and Presentation of Cases before the Tribunal, in accordance with article 50 of the Rules. The Guidelines were adopted by the Tribunal on

28 October 1997. They are intended to provide the parties appearing before the Tribunal with practical information concerning proceedings in cases, including the length, format and presentation of written and oral pleadings and the use of electronic means of communication.

VIII. JUDICIAL WORK OF THE TRIBUNAL

A. M/V "Saiga" case (prompt release)

51. During the period under review, the Tribunal received the first application instituting a case. This followed almost immediately after the conclusion of the fourth session of the Tribunal and the adoption of its Rules, the Resolution on Internal Judicial Practice and the Guidelines concerning the Preparation and Presentation of Cases before the Tribunal.

52. On 13 November 1997, an Application under article 292 of the Convention was filed in the Registry of the Tribunal by Saint Vincent and the Grenadines instituting proceedings against Guinea. The Application dealt with a dispute concerning the prompt release of the M/V Saiga, an oil tanker flying the flag of Saint Vincent and the Grenadines, which was arrested on 28 October 1997 by Guinean customs patrol boats and detained in Conakry, Guinea. The application was entered in the List of Cases as Case No. 1 and named the M/V Saiga (prompt release).

1. Arrangements for the preparation and presentation of the case

53. The Registry made the necessary arrangements for the preparation of the M/V Saiga case for consideration by the Tribunal. The proceedings were instituted on 13 November 1997, and although, with the exception of the President, the judges are not resident at the seat of the Tribunal, it proved possible for the Tribunal to be convened for deliberations on the case on 20 November 1997. In the absence of a courtroom in the temporary premises of the Tribunal at Wexstrasse 4, arrangements were made with the authorities of the host country for the provision of a suitable courtroom and facilities for the hearing in the case. The hearing took place in the Great Hall of the Hamburg City Hall. Administrative arrangements were also made for interpretation at all sessions, translation of pleadings, verbatim reporting services, travel of witnesses, the presentation of maps and projection of photographs.

2. Proceedings

54. In the Application, Saint Vincent and the Grenadines requested that the vessel, its cargo and crew be promptly released in accordance with article 292 of the Convention. Saint Vincent and the Grenadines alleged that Guinea had no jurisdiction to arrest the vessel and had not complied with article 73, paragraph 2, of the Convention.

55. Guinea contended that the M/V Saiga was involved in smuggling, an offence under the Customs Code of Guinea, and that the detention had taken place after

the exercise by Guinea of the right of hot pursuit in accordance with article 111 of the Convention.

56. In view of the urgency attached to the prompt release proceedings and the humanitarian consideration for the crew, the Tribunal was obliged by the Convention and its Rules to act rapidly. The hearing was opened on 21 November 1997, eight days after the application was filed.

57. By an Order of 21 November 1997, the Tribunal, upon the request of Guinea, postponed the continuation of the hearing until 27 November 1997. The statement in response was transmitted by Guinea to the Tribunal on 26 November 1997.

58. Two public sittings to hear the oral arguments of the parties and to present evidence were held on 27 and 28 November 1997.

3. Judgment

59. Six days after the end of the oral proceedings, on 4 December 1997, the Tribunal delivered its judgment on the case. The whole procedure before the Tribunal took exactly three weeks.

60. The Tribunal found in its judgment that it had jurisdiction and ordered that Guinea must promptly release the M/V Saiga and its crew from detention.

B. M/V "Saiga" case (provisional measures)

61. By a communication dated 22 December 1997, Saint Vincent and the Grenadines transmitted to the Tribunal a copy of an application instituting arbitral proceedings against Guinea together with a request for the prescription of provisional measures. This development resulted in the submission of the M/V Saiga case (provisional measures) and the rescheduling of the session initially planned for March 1998.

IX. PRIVILEGES AND IMMUNITIES

A. General Agreement

62. At the request of the Meeting of States Parties,[12] the Tribunal considered the Final draft Protocol on the Privileges and Immunities of the International Tribunal for the Law of the Sea, prepared by the Preparatory Commission.[13] In response to that request the Tribunal, at its second session, made recommendations on the draft Agreement on Privileges and Immunities of the International Tribunal for the Law of the Sea which was presented to the Sixth Meeting of States Parties.[14] The work of the Tribunal on privileges and immunities was greatly assisted by a study prepared by Judge Akl, which served as the basis for the discussions at the second session.

63. On 23 May 1997, the Seventh Meeting of States Parties adopted the Agreement on the Privileges and Immunities of the International Tribunal for the Law of

the Sea.[15] The Agreement was deposited with the Secretary-General of the United Nations and opened for signature at United Nations Headquarters for 24 months from 1 July 1997. The Agreement is subject to ratification or accession and will enter into force 30 days after the date of deposit of the tenth instrument of ratification or accession. As of 31 December 1997, three States had signed the Agreement and one had ratified it. It is hoped that Governments concerned will give consideration to the early signature of the Agreement and its ratification.

B. Headquarters Agreement

64. An important matter addressed by the Tribunal during its organizational phase was the Headquarters Agreement between the International Tribunal for the Law of the Sea and the Federal Republic of Germany. A draft of the Agreement[16] was approved by the Preparatory Commission and recommended to the Tribunal by the Meeting of States Parties as a basis for negotiations with the host country.[17] At its first session, the Tribunal authorized the President, the Vice-President and the Registrar to negotiate a headquarters agreement with the German authorities. Following that decision, the President, Vice-President and Registrar held consultations with the Director of the Legal Division of the Ministry of Foreign Affairs and representatives of other ministries. As of 31 December 1997, agreement had been reached on most of the terms of the Agreement and it was expected that a formal Agreement would be concluded shortly.

65. Since the Tribunal was due to commence its functioning in the host country without any agreement on the granting of the requisite privileges and immunities, facilities and prerogatives, the Legal Counsel of the United Nations requested the German authorities to take an early initiative. Pending the conclusion of a headquarters agreement, an interim ordinance was adopted by the host country.[18] Among others, the interim arrangement applies, mutatis mutandis, the relevant provisions of the Convention on the Privileges and Immunities of the Specialized Agencies of the United Nations of 21 November 1947 to the Tribunal.

X. RELATIONS WITH THE UNITED NATIONS AND OTHER ORGANIZATIONS

A. Observer status with the General Assembly

66. The General Assembly of the United Nations, at its fifty-first session, granted observer status to the Tribunal pursuant to an initiative coordinated by the Federal Republic of Germany and sponsored by 77 Member States.[19] Observer status enables the Tribunal to participate in the meetings and the work of the General Assembly when matters of relevance to the Tribunal are being considered.

B. Relationship Agreement with the United Nations

67. The States Parties to the Convention recommended that the Tribunal enter into a relationship agreement with the United Nations, taking into consideration the Final draft Agreement on Cooperation and Relationships between the United Nations and the International Tribunal for the Law of the Sea.[20] At the request of the Tribunal, the Registrar consulted with the United Nations and subsequently negotiations took place between the Registry and the Office of the Legal Counsel in order to agree on the terms of such an agreement. After successful negotiations, the Agreement on Cooperation and Relationship between the United Nations and the International Tribunal for the Law of the Sea was signed by the Secretary-General of the United Nations and the President of the Tribunal on 18 December 1997 in New York. According to its terms, the Agreement is to be applied provisionally by the United Nations and the Tribunal from the date of signature and will enter into force on its approval by the General Assembly of the United Nations and the Tribunal.

68. The Agreement establishes a mechanism for cooperation between the United Nations and the Tribunal, with a view to facilitating the effective attainment of their mutual objectives and the coordination of their activities. It provides for arrangements for representation at meetings, taking into account the observer status granted to the Tribunal, and the provision of conference services. Cooperative arrangements for the regular exchange of information and documents of mutual interest are provided, including transmission of documents related to the depositary functions of the Secretary-General of the United Nations. Cooperation in personnel and administrative matters, as well as budgetary and financial matters, is also established.

C. Relationships with other organizations and bodies

69. The Meeting of States Parties also agreed on the desirability for the Tribunal to enter into a cooperation arrangement with the International Seabed Authority.[21] The Tribunal requested the Registrar to enter into consultations with the Secretary-General of the International Seabed Authority for this purpose.

XI. RELATIONS WITH THE HOST COUNTRY

70. The Third United Nations Conference on the Law of the Sea accepted the offer by the Federal Republic of Germany to host the Tribunal and decided that the seat of the Tribunal should be in the Free and Hanseatic City of Hamburg.[22] On 18 October 1996, the Secretary-General of the United Nations and other dignitaries participated in a ceremony to lay the foundation stone for the future premises of the Tribunal at the site on the Elbchaussee in Hamburg overlooking the river Elbe. The premises are scheduled to be ready at the end of 1999.

71. Pending completion of the future premises, the German authorities provided the Tribunal with a temporary building situated at Wexstrasse 4 in the centre of Hamburg. The choice of this facility was determined in consultations between

the United Nations and the German authorities. The location and the availability of two large halls, providing space for an interim courtroom and a library and adjoining archives, favoured this building. The offices for judges and the Registrar and also the room for meetings of the Tribunal were refurbished and made available in stages. Construction on the interim courtroom and library and archive halls was due to start in January 1998.

72. Progress was also made towards the conclusion of an additional agreement between the Government of Germany and the Tribunal concerning the occupancy and use of the temporary premises of the Tribunal. This would precede the conclusion of another agreement on the occupancy and use of the permanent premises.

XII. FINANCES

A. Budget

73. Pursuant to article 19 of the Statute, the expenses of the Tribunal shall be borne by the States Parties, the International Seabed Authority and other entities. The Meeting of States Parties decided provisionally to apply the scale of assessments of the United Nations to States Parties.[23]

74. The budget proposals for the functional phase (1998) were prepared by the Tribunal based on a proposal by the Registrar and submitted to the Seventh Meeting of States Parties. For this purpose, the judges examined the budgetary provisions for the initial period of the Tribunal (August 1996 to December 1997) provided by the States Parties and identified additional and important needs for which provision was made in the budget proposals for 1998. The Meeting of States Parties approved a budget for 1998 totalling $5,767,169 composed of: (a) a recurrent expenditure of $5,627,169 including $1,971,330 for the remuneration of the judges and $2,419,239 for salaries and related costs of staff; and (b) a non-recurrent expenditure of $140,000.

75. An important responsibility entrusted by the Meeting of States Parties to the Registrar at the time of adoption of the first budget for 1996/97, was the computation, assessment and collection of the contributions to be made by the States Parties, the International Seabed Authority and other entities to the expenses of the Tribunal.

76. As of 31 December 1997, 54 States Parties had made their contributions (in the full amount assessed or above) to the 1996/97 budget totalling $5,911,624. Partial contributions totalling $262,419 had been made by 15 States Parties and payment of contributions by 54 States Parties in the amount of $742,273 was still pending. The non-payment of contributions led to cash-flow difficulties which jeopardized the ability of the Tribunal to fulfil its mandate and meet its financial obligations.

77. In accordance with the practice of the United Nations system, arrangements were made for the accounts of the Tribunal to be audited by an internationally recognized external institution.

78. At its fourth session, the Tribunal gave preliminary consideration to the draft budget for 1999, based on the proposals by the Registrar. The proposals included a pension scheme for the members of the Tribunal.

B. Accounting and budgetary periods

79. At its third session, the Tribunal decided to operate accounting and budgetary periods based on the calendar year, pending adoption of a biennial period by the Meeting of States Parties.

C. Financial Regulations

80. In accordance with the decision of the Meeting of States Parties, pending the adoption of its own regulations, the Tribunal applies, mutatis mutandis, the Financial Regulations of the United Nations.[24] A set of draft financial regulations was under preparation for submission to the Meeting of States Parties.

XIII. ADMINISTRATIVE MATTERS

A. United Nations common system

81. Following the decision of the Meeting of States Parties, the Tribunal decided to participate in the common system of salaries, allowances and other conditions of service of the United Nations and the specialized agencies.

B. Staff Regulations

82. Based on the recommendation of the Preparatory Commission and the decision of the Meeting of States Parties,[25] the Tribunal decided to apply, mutatis mutandis, the Staff Regulations and Rules of the United Nations, pending the adoption of its own staff regulations. A proposal for staff regulations for the Registry is under preparation for consideration by the Tribunal. Once the Registry staff regulations are approved by the Tribunal, they will be submitted to the Meeting of States Parties for consideration.

C. Recruitment of staff

83. Pursuant to a decision of the Meeting of States Parties, the Registry commenced its work with a small nucleus of staff to organize and carry out the functions of the Registry. At the request of the Registry, staff from the United Nations Secretariat was seconded by the Secretary-General to the Tribunal. The necessary personnel were recruited to provide the services needed when the Tribunal was sitting, including its deliberations on the M/V Saiga case. Temporary staff was also engaged as required to assist the Tribunal in its judicial work.

84. The Tribunal has commenced the recruitment process for both Professional and General Service staff, in accordance with article 35 of the Rules of the Tribunal. Appointment of staff will be completed up to the numbers provided for in the 1998 budget.

D. United Nations Joint Staff Pension Fund

85. The Meeting of States Parties recommended that the Tribunal should participate in the United Nations Joint Staff Pension Fund.[26] At its first session, the Tribunal endorsed this recommendation and requested the Registrar to maintain the application by the Tribunal to participate in the Pension Fund. Pursuant to a decision of the General Assembly of the United Nations, membership in the Pension Fund became effective from 1 January 1997.[27]

86. At its first session, the Tribunal also requested the Registrar to proceed with the negotiation and conclusion of the required agreements for admission of the Tribunal to the United Nations Joint Staff Pension Fund. On 30 June 1997, the Agreement between the United Nations Joint Staff Pension Board and the International Tribunal for the Law of the Sea, as to the conditions governing the admission of the International Tribunal for the Law of the Sea to membership in the United Nations Joint Staff Pension Fund, was signed.

XIV. LIBRARY FACILITIES

87. Both the Preparatory Commission and the United Nations General Assembly emphasized the need for establishing a specialized library within the Tribunal and making it operational as soon as possible. This was also endorsed by the Meeting of States Parties. However, no specific budgetary provision was included for this purpose in the 1996/97 budget. During the period under review, the Tribunal made strenuous efforts to collect as much material as possible from libraries, publishers, Governments, national institutions, international organizations, private individuals, and members of the Tribunal and the Registry. The Tribunal expresses its appreciation to all donors for their valuable contributions to the library and also its wish that further donations be made (the list of donors is contained in the annex to the present report).

88. At the fourth session, the Tribunal considered proposals concerning the organization of the Library, a preliminary classification scheme for the Library, the list of monographs and periodicals proposed for purchase by the Tribunal as well as the non-recurrent expenditure for the Library.

XV. PUBLICATIONS

89. The Tribunal decided to publish a Yearbook, Basic Documents, Reports (Judgments and Orders) and, if possible, Pleadings. Each of these publications will be issued separately. The Tribunal also considered the format and table of contents of the Yearbook.

XVI. PUBLIC INFORMATION

90. The Tribunal has given publicity to its work by means of press releases and briefings by the Registry. Information about the Tribunal can also be found on the United Nations Web site (http://www.un.org/Depts/los). Addresses and publications by the judges also helped to publicize the work of the Tribunal.

XVII. FUTURE WORK

A. Judicial work

91. The primary task of the Tribunal is to settle disputes concerning the interpretation or application of the Convention. Consequently, the programme of work of the Tribunal for 1998 will depend on the cases which are submitted to it.

B. Non-judicial work

92. In addition to the work involved with the cases, the work programme of the Tribunal for 1998 envisages the holding of two sessions, each of four weeks' duration. This programme of meetings is needed in order for the Tribunal to complete its organizational work and to carry out its administrative work. Pursuant to a decision taken at its fourth session, the 1998 sessions were planned to take place from 2 to 28 March and from 21 September to 16 October.

93. The major tasks for the completion of the organizational phase and other ongoing tasks to be undertaken included:

(i) Consideration and adoption of the Staff Regulations;

(ii) Consideration and adoption of Instructions to the Registry;

(iii) Consideration and adoption of the Financial Regulations;

(iv) Consideration of arrangements for cooperation with the International Seabed Authority and other international organizations or bodies;

(v) Finalization of the Headquarters Agreement.

94. Other matters which the Tribunal was expected to consider included:

(i) Annual report to the Meeting of States Parties;

(ii) Budget proposals of the Tribunal;

(iii) Recommendations of the Tribunal to the Meeting of States Parties on matters relating to the Tribunal on which the Meeting of States Parties has the responsibility to take decisions or make determinations;

(iv) Dissemination of information on the work of the Tribunal, including the issue of the Yearbook and other publications;

(v) Possible reports to the United Nations on appropriate aspects of its work.

Notes

[1] See SPLOS/8, para. 7.

[2] SPLOS/4, para. 35.

[3] See General Assembly resolution 49/28, para. 11, and SPLOS/4, para. 14.

[4] See Rules of the Tribunal, article 32.

[5] Ibid., article 33.

[6] SPLOS/24, para. 14.

[7] Particularly, Part XI, section 5, articles 186 to 191, thereof.

[8] See Convention, article 191.

[9] See Statute, article 35.

[10] See Statute, article 25, and Rules of the Tribunal, article 28.

[11] LOS/PCN/152, Vol. I (LOS/PCN/SCN.4/WP.16/Add.1), p. 26.

[12] SPLOS/14, para. 39.

[13] LOS/PCN/152, Vol. I (LOS/PCN/SCN.4/WP.16/Add.3), p. 115.

[14] See ITLOS/CRP.28 of 17 February 1997.

[15] SPLOS/4, para. 32, SPLOS/5, paras. 14 and 15, SPLOS/8, para. 13, SPLOS/14, paras. 37-40, SPLOS/20, paras. 22-26, SPLOS/24, paras. 19-27.

[16] LOS/PCN/152, Vol. I (LOS/PCN/SCN.4/WP.16/Add.2), p. 91.

[17] SPLOS/14, para. 33.

[18] German Ordinance on the Privileges and Immunities of the International Tribunal for the Law of the Sea of 10 October 1996.

[19] See General Assembly resolution 51/204.

[20] SPLOS/14, para. 33, and LOS/PCN/152, Vol. I (LOS/PCN/SCN.4/WP.16/Add.4).

[21] SPLOS/14, para. 33, and LOS/PCN/152, Vol. III (LOS/PCN/SCN.4/L.17).

[22] Statute, article 1.

[23] SPLOS/WP.3/Rev.1, para. 34.

[24] SPLOS/8, para. 9.

[25] SPLOS/8, para. 11, and SPLOS/L.1, para. 10.

[26] SPLOS/14, para. 35.

[27] General Assembly resolution 51/217, part VI.

Annex

LIST OF DONORS TO THE LIBRARY OF THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA*

Professor Anand, R. P., New Delhi
T. M. C. Asser Instituut, The Hague
British Foreign and Commonwealth Office, London
British Embassy, Bonn
British Institute of International and Comparative Law, London
Bundesforschungsanstalt für Fischerei, Hamburg
Cambridge University Press, Cambridge, United Kingdom
Centre de Droit Maritime et Océanique, Université de Nantes, Nantes, France
Comité maritime international, Antwerp, Belgium
Commission Internationale pour l'Exploration Scientifique de la mer Méditerrannée, Monaco
Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, United Nations, New York
Dunker & Humblot GmbH, Berlin
Professor René-Jean Dupuy, Paris
Economic Commission for Latin America and the Caribbean, Santiago
Economic and Social Commission for Asia and the Pacific, Bangkok
Economic and Social Commission for Western Asia, Amman
Food and Agriculture Organization of the United Nations, Rome
Georgetown University Law Center, Washington
Indian Society of International Law, New Delhi
International Council for Commercial Arbitration, Vienna
International Court of Arbitration, The Hague
International Center for Settlement of Investment Disputes, Washington
INFOFISH, Kuala Lumpur
Institut de Droit International, Bellevue, Switzerland
Institut für Seerecht und Seehandelsrecht der Universität Hamburg, Hamburg
Institute of International Public Law and International Relations, Thessaloniki
Inter-American Court of Human Rights, San José
International Council of Environmental Law, Bonn
International Court of Justice, The Hague
International Labour Organization, Geneva
International Law Association, Japan Branch, Tokyo
International Maritime Organization, London
International Whaling Commission, Cambridge, United Kingdom
Kluwer Law International, The Hague
Professor Umberto Leanza, Rome
Law of the Sea Institute, University of Miami, Miami (former Law of the Sea Institute, University of Hawaii, Honolulu)
Lega Navale Italiana, Agrigento, Italy
Massmann Internationale Buchhandlung, Hamburg

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* This list does not take into account donations from Members of the Tribunal and Staff of the Registry.

C. F. Müller Verlag, Heidelberg, Germany
Northwest Atlantic Fisheries Organization, Dartmouth, Canada
Fridtjof Nansen Institute, Lysaker, Norway
Naval War College, Newport, United States
North Pacific Anadromous Fish Commission, Vancouver, Canada
World Meteorological Organization, Geneva
Permanent Mission of Germany to the United Nations, New York
Max Planck Institut für Ausländisches Öffentliches Recht und Völkerrecht, Heidelberg, Germany
Professor Renate Platzöder, Ebenhausen
Mr. Bruce Rashkow, New York
Research Centre for Marine Geoscience at the Christian Albrecht University, Kiel, Germany
Ambassador Shabtai Rosenne, Jerusalem
Walther-Schücking-Institut für Internationales Recht an der Universität Kiel, Kiel, Germany
Scientific Committee and Commission for the Conservation of Antarctic Marine Living Resources, Hobart, Australia
Professor Louis Sohn, Washington
United Nations Committee against Torture, Geneva
United Nations Security Council, United Nations Compensation Commission, Geneva
Università degli Studi di Roma "Tor Vergata", Rome
Professor Daniel Vignes, Paris
Virginia School of Law, Center for Ocean Law and Policy, Charlottesville, United States
World Conservation Union, Gland, Switzerland